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Attorneys for Secured Creditor,
Deutsche Bank National Trust Company, as Trustee
for NovaStar Mortgage Funding Trust, Series 2006-4

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

WENDELL HARPER AND MARY-
KATHRYN HARPER

Debtor.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR
NOVASTAR MORTGAGE FUNDING
TRUST, SERIES 2006-4,

Movant,

vs.

WENDELL HARPER AND MARY-
KATHRYN HARPER, Debtors, and John
Kendall, Trustee,

Respondents.

Bankruptcy Case No. 10-48255-RJN

Docket Control No. ND-532

Chapter 7

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR NOVASTAR
MORTGAGE FUNDING TRUST, SERIES
2006-4'S MOTION FOR RELIEF FROM
AUTOMATIC STAY**

HEARING DATE:
DATE: April 7, 2011
TIME: 1:30 PM
CTRM: 220

**TO THE HONORABLE RANDALL J. NEWSOME, UNITED STATES BANKRUPTCY
COURT JUDGE, THE DEBTORS, THE DEBTORS' COUNSEL, THE TRUSTEE AND
OTHER INTERESTED PARTIES:**

MOTION FOR RELIEF FROM STAY - 1

Law Offices of
ROBINSON TAIT, P.S.

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1 PLEASE TAKE NOTICE that DEUTSCHE BANK NATIONAL TRUST COMPANY, AS
2 TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2006-4, ("Movant") has
3 filed the attached Motion for Relief from the Automatic Stay (the "Motion") in the above-entitled
4 and numbered Chapter 7 case.
5

6 This Motion is based upon the Memorandum of Points and Authorities attached
7 hereto, as well as upon the documents filed in support of the Motion.
8

9 DATED: March 21, 2011

Respectfully Submitted,
ROBINSON TAIT, P.S.

11 By: /s/ Nicolas Daluiso
12 NICOLAS DALUIISO
13 Attorneys for Deutsche Bank National Trust
14 Company, as Trustee for NovaStar Mortgage
15 Funding Trust, Series 2006-4
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for NovaStar Mortgage Funding Trust, Series 2006-4

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

WENDELL HARPER AND MARY-
KATHRYN HARPER

Debtor.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR
NOVASTAR MORTGAGE FUNDING
TRUST, SERIES 2006-4,

Movant,

vs.

WENDELL HARPER AND MARY-
KATHRYN HARPER, Debtors, and John
Kendall, Trustee,

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Bankruptcy Case No. 10-48255-RJN

Docket Control No. ND-532

Chapter 7

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR NOVASTAR
MORTGAGE FUNDING TRUST, SERIES
2006-4'S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF ITS
MOTION FOR RELIEF FROM STAY**

HEARING DATE:
DATE: April 7, 2011
TIME: 1:30 PM
CTRM: 220

**TO THE HONORABLE RANDALL J. NEWSOME, UNITED STATES BANKRUPTCY
COURT JUDGE, THE DEBTORS, THE DEBTORS' COUNSEL, THE TRUSTEE AND
OTHER INTERESTED PARTIES:**

MOTION FOR RELIEF FROM STAY - 3

Law Offices of
ROBINSON TAIT, P.S.

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1 PLEASE TAKE NOTICE that DEUTSCHE BANK NATIONAL TRUST
2 COMPANY, AS TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2006-
3 4, ("Movant") hereby files this Memorandum of Points and Authorities in support of its Motion for
4 Relief From The Automatic Stay (the "Motion") in the above-entitled and numbered Chapter 7 case.
5

6 I.

7 **INTRODUCTORY STATEMENT**

8 Movant requests the Court to grant it relief from the automatic stay because the Debtors have
9 failed to maintain regular monthly payments and there is no equity in the property to benefit the
10 Debtors or the bankruptcy estate.

11 II.

12 **STATEMENT OF FACTS**

13
14 1. **The Secured Debt.** On or about June 23, 2006, WENDELL HARPER
15 AND MARY HARPER, made and delivered a Promissory Note in the original principal amount of
16 \$475,000.00, secured by a Priority Deed of Trust on the Property commonly known as 4151 Mifflin
17 Court, El Sobrante, CA, 94803 (the "Property"). True and correct copies of the Note, Deed of Trust,
18 and Assignment of Deed of Trust are attached as Exhibits "1," "2," and "3," respectively.

19 2. **The Default Under The Note.** Movant's Note and Deed of Trust are
20 contractually due for the November 1, 2009 payment. As a result of the default, Movant desires to
21 commence or continue with foreclosure action against the Property. The total delinquency under the
22 Note is set forth in detail on Exhibit "4" to the Motion.

23 3. **The Debtors' Interest In The Property.** The Debtors are the owners of
24 record of the Property.

25 4. **The Filing Of The Instant Petition.** On July 21, 2010, WENDELL
26 HARPER AND MARY-KATHRYN HARPER filed the instant Chapter 13 Petition as Case No.
27 10-48255. The case converted to a Chapter 7 on December 23, 2010
28

1 5. **The Total Indebtedness Under The Note.** The total indebtedness owed to
2 Movant is as follows:

3 Principal Balance:	\$ 473,974.15
4 Interest Accrued:	\$ 22,755.01
5 Deferred Interest:	\$ 23,750.00
6 Deferred Expense Advances:	\$ 2,553.00
7 Total Fees (Including Attorney costs for this Motion):	\$ 4,505.30
8 Late Charges:	\$ 692.70
9 Escrow	\$ 25,216.93
10 TOTAL:	\$ 553,447.09

11 6. **The Total Liens On The Property.** The Property is encumbered by the
12 following liens:

13 <u>SECURED CREDITOR</u>	<u>LIEN AMOUNT</u>
14 1. Deutsche Bank National Trust Company, as Trustee for 15 NovaStar Mortgage Funding Trust, Series 2006-4 (1 st trust 16 deed)	\$ 553,447.09
17 TOTAL	\$ 553,447.09

18 7. **The Value Of The Property.** By the Debtors' own admission, the
19 Property has a fair market value of only \$200,000.00. Accordingly, there is no equity in the Property
20 to benefit the Debtors or the estate. True and correct copies of the Debtors' Schedules A and D are
21 attached hereto as Exhibit "5."

22 **III.**

23 **REQUEST FOR JUDICIAL NOTICE.**

24 Pursuant to Rule 201 of the Federal Rules of Evidence, as made applicable herein by
25 Rule 9017 of the Federal Rules of Bankruptcy Procedure, Movant, requests that the Court take
26 judicial notice of the following facts:

27 1. The Debtor contends that the Property has a fair market value of \$200,000.00.
28 See Exhibit "5."

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IV.

CONCLUSION.

For the foregoing reasons, and based upon the evidence set forth in this Motion, this Court should grant the relief from the automatic stay to allow Movant to enforce its rights and remedies under its Note and Deed of Trust up to and including foreclosure of its mortgage against the Debtor's interest in the Property. Movant further seeks relief in order to contact the Debtor by telephone or by written correspondence. Movant may at its option offer, provide and enter into a forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement. Movant requests a waiver of the 14-day stay provided by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

Movant further requests that this Order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. Furthermore, Movant, is specifically requesting the Court to award attorneys fees and costs incurred in connection with this matter.

DATED: March 21, 2011

Respectfully Submitted,
ROBINSON TAIT, P.S.

By: /s/ Nicolas Daluiso
NICOLAS DALUIISO
Attorneys for Deutsche Bank National Trust
Company, as Trustee for NovaStar Mortgage
Funding Trust, Series 2006-4